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STATE OF WASHINGTON
ETHICS ADVISORY COMMITTEE
OPINION 13-07

Questions

May a judicial officer in a juvenile matter, *sua sponte* or at the request of either party, review public and/or sealed records maintained in the Judicial Access Browser System (JABS)?

If the answer is yes, does CJC 2.9(C), prohibiting judicial officers from investigating facts in pending or impending matters, affect that review?

If review is permitted, what limitations apply to the review itself and to the judicial officer's description to counsel of the sealed materials the judicial officer has reviewed?

Do these considerations apply similarly to all juvenile proceedings including delinquency (offender) proceedings?

The court has questions about the application of EAC Opinion 04-07 http://www.courts.wa.gov/programs_orgs/pos_ethics/?fa=pos_ethics.dispopin&mode=0407 when a judicial officer is reviewing records maintained in the Judicial Access Browser System (JABS) to proceedings in juvenile court.

The court has stated that many of the juvenile files maintained in JABS (including offender, dependency, At Risk Youth and Child in Need of Services case files) are not generally available to the public. The court has also stated that judicial officers want to review these materials before hearing a matter, for pertinent background information. In those cases, the judicial officer advises both counsel of the documents reviewed and the information obtained, and gives both counsel the opportunity to respond.

The court notes that in many cases, the same judicial officer has heard some or all of the proceedings regarding a juvenile and knows the child's history and may have issued one or more of the orders maintained in JABS.

According to the JABS Online Manual, JABS uses a Web browser to display case history information on certain kinds of cases filed in superior, district, and municipal courts in this state. This same case history information is available by signing onto the JIS mainframe computer and viewing a variety of screens in both the JIS and SCOMIS applications.

The manual explains that JABS displays statewide case history and domestic violence case history for: 1) all criminal and infraction cases filed in district and municipal courts; 2) all criminal and juvenile offender cases filed in superior court; 3) superior court domestic, parentage, or dependency cases involving children or domestic violence; and 4) superior, district, and municipal civil cases involving domestic violence or unlawful harassment.

Answer

CJC 1.1 provides in part that a judge shall act in a manner that promotes public confidence in the impartiality of the judiciary and CJC 2.2 provides in part that a judicial officer shall perform all duties of judicial office fairly and impartially. The language in the Washington version of CJC 2.9(C) deviates from the language in the American Bar Association Model Code of Judicial Conduct. The Washington language provides that a judge shall not investigate facts in a matter pending before the judge and shall consider only the evidence presented and any facts that may be judicially noticed, *unless expressly authorized by law*. The language in the model Code does not contain the last phrase above and Comment 6 is the same in both versions.

The issue in this inquiry is whether a review by a judicial officer of a record that is sealed and generally unavailable to the public constitutes an ex parte communication, which is prohibited by CJC 2.9(C). Judicial officers who investigate the merits of matters that are before them by independently communicating with witnesses or by conducting reviews of matters in factual dispute violate this prohibition. Comment [6] makes it clear that this prohibition against a judge independently investigating facts extends to information available by electronic means.

Whether review of material maintained in JABS can be conducted, and the limitations that apply to the review and to the judicial officer's description to counsel, will depend upon the circumstances in each matter. CJC 2.9(C) permits a judicial officer to investigate facts only in situations where it is expressly authorized by law. Thus, as noted in EAC Opinion 04-07, a judicial officer may consider the Judicial Information System screen when setting conditions of release because CrR 3.2 and CrRLJ 3.2 provide that judicial officers must consider a variety of factors, including criminal history, when determining the release of the accused.

Another example of an express legal authorization to judicial officers to consult databases is RCW 26.09.182, which requires a judicial officer, before entering a permanent parenting plan, to "determine the existence of any information and proceedings relevant to the placement of the child that are available in the judicial

information system and databases.” These examples are not exhaustive; there may be other authority permitting the examination of the records in the database. However, unless there is a specific statute, court rule, or case law allowing the judicial officer to consult the judicial information system, the prohibition of CJC 2.9(C) applies to all cases.

In summary, a judicial officer in a juvenile matter may not *sua sponte* review public and /or sealed records maintained in JABS unless such review is authorized by law, i.e., by statute, court rule, or case law. If a party to a proceeding requests the court to review JABS records, but such review is not expressly authorized by law, then the court should allow the other party or parties to the case to be heard before deciding whether such review would be legally appropriate. The court should specifically describe the records that it has reviewed or will review, as opposed to generally stating that it will review JABS records. Following the court’s review, the court should describe the substance of such records.

Any review of JABS records conducted by the court should be limited to reviews expressly authorized by law or reviews conducted in accordance with the court’s decision after all parties to the case have had an opportunity to be heard. If the court has prior knowledge of material in JABS or other databases, and wishes to take judicial notice of such material in a particular case, the court should follow the procedure outlined in ER 201(e).

The court should advise the parties to the case of the material the court has reviewed from JABS or other databases.

These considerations apply to all juvenile proceedings, including delinquency (offender) proceedings.